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HOUSE BILL 37

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Ray Begaye

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

RELATING TO REAL PROPERTY; AMENDING THE NEW MEXICO SUBDIVISION  
ACT TO PROVIDE FOR TRIBAL NOTIFICATION IN SPECIFIED INSTANCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 47-6-2 NMSA 1978 (being Laws 1973,  
Chapter 348, Section 2, as amended) is amended to read:

"47-6-2. DEFINITIONS.--As used in the New Mexico  
Subdivision Act:

A. "board of county commissioners" means the  
governing board of a county;

B. "common promotional plan" means a plan or scheme  
of operation, undertaken by a single subdivider or a group of  
subdividers acting in concert, to offer for sale or lease  
parcels of land where the land is either contiguous or part of  
the same area of land or is known, designated or advertised as

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1 a common unit or by a common name;

2 C. "final plat" means a map, chart, survey, plan or  
3 replat certified by a licensed, registered land surveyor  
4 containing a description of the subdivided land with ties to  
5 permanent monuments prepared in a form suitable for filing of  
6 record;

7 D. "immediate family member" means a husband, wife,  
8 father, stepfather, mother, stepmother, brother, stepbrother,  
9 sister, stepsister, son, stepson, daughter, stepdaughter,  
10 grandson, stepgrandson, granddaughter, stepgranddaughter,  
11 nephew and niece, whether related by natural birth or adoption;

12 E. "Indian lands" means:

13 (1) real property designated as reservation  
14 land;

15 (2) real property held in trust by the federal  
16 government on behalf of an Indian nation, tribe, or pueblo;

17 (3) real property that is part of a pueblo  
18 land grant; or

19 (4) real property that is owned in fee by an  
20 Indian nation, tribe or pueblo that is contiguous to existing  
21 reservation land or land that is contiguous to land that is  
22 held in trust on behalf of an Indian nation, tribe or pueblo;

23 F. "Indian nation, tribe or pueblo" means any  
24 federally recognized Indian nation, tribe or pueblo located  
25 wholly or partially in New Mexico;

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1           ~~[E-]~~ G. "lease" means to lease or offer to lease  
2 land;

3           ~~[F-]~~ H. "parcel" means land capable of being  
4 described by location and boundaries and not dedicated for  
5 public or common use;

6           ~~[G-]~~ I. "person" means any individual, estate,  
7 trust, receiver, cooperative association, club, corporation,  
8 company, firm, partnership, joint venture, syndicate or other  
9 entity;

10           ~~[H-]~~ J. "preliminary plat" means a map of a  
11 proposed subdivision showing the character and proposed layout  
12 of the subdivision and the existing conditions in and around it  
13 and need not be based upon an accurate and detailed survey of  
14 the land;

15           ~~[I-]~~ K. "sell" means to sell or offer to sell land;

16           ~~[J-]~~ L. "subdivide" means to divide a surface area  
17 of land into a subdivision;

18           ~~[K-]~~ M. "subdivider" means any person who creates  
19 or who has created a subdivision individually or as part of a  
20 common promotional plan or any person engaged in the sale,  
21 lease or other conveyance of subdivided land; however,  
22 "subdivider" does not include any duly licensed real estate  
23 broker or salesperson acting on another's account;

24           ~~[L-]~~ N. "subdivision" means the division of a  
25 surface area of land, including land within a previously

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1 approved subdivision, into two or more parcels for the purpose  
2 of sale, lease or other conveyance or for building development,  
3 whether immediate or future; but "subdivision" does not  
4 include:

5 (1) the sale, lease or other conveyance of any  
6 parcel that is thirty-five acres or larger in size within any  
7 twelve-month period, provided that the land has been used  
8 primarily and continuously for agricultural purposes, in  
9 accordance with Section 7-36-20 NMSA 1978, for the preceding  
10 three years;

11 (2) the sale or lease of apartments, offices,  
12 stores or similar space within a building;

13 (3) the division of land within the boundaries  
14 of a municipality;

15 (4) the division of land in which only gas,  
16 oil, mineral or water rights are severed from the surface  
17 ownership of the land;

18 (5) the division of land created by court  
19 order where the order creates no more than one parcel per  
20 party;

21 (6) the division of land for grazing or  
22 farming activities; provided the land continues to be used for  
23 grazing or farming activities;

24 (7) the division of land resulting only in the  
25 alteration of parcel boundaries where parcels are altered for

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1 the purpose of increasing or reducing the size of contiguous  
2 parcels and where the number of parcels is not increased;

3 (8) the division of land to create burial  
4 plots in a cemetery;

5 (9) the division of land to create a parcel  
6 that is sold or donated as a gift to an immediate family  
7 member; however, this exception shall be limited to allow the  
8 seller or donor to sell or give no more than one parcel per  
9 tract of land per immediate family member;

10 (10) the division of land created to provide  
11 security for mortgages, liens or deeds of trust; provided that  
12 the division of land is not the result of a seller-financed  
13 transaction;

14 (11) the sale, lease or other conveyance of  
15 land that creates no parcel smaller than one hundred forty  
16 acres;

17 (12) the division of land to create a parcel  
18 that is donated to any trust or nonprofit corporation granted  
19 an exemption from federal income tax, as described in Section  
20 501(c)(3) of the United States Internal Revenue Code of 1986,  
21 as amended; school, college or other institution with a defined  
22 curriculum and a student body and faculty that conducts classes  
23 on a regular basis; or church or group organized for the  
24 purpose of divine worship, religious teaching or other  
25 specifically religious activity; or

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1 (13) the sale, lease or other conveyance of a  
2 single parcel from a tract of land, except from a tract within  
3 a previously approved subdivision, within any five-year period;  
4 provided that a second or subsequent sale, lease or other  
5 conveyance from the same tract of land within five years of the  
6 first sale, lease or other conveyance shall be subject to the  
7 provisions of the New Mexico Subdivision Act; provided further  
8 that a survey shall be filed with the county clerk indicating  
9 the five-year holding period for both the original tract and  
10 the newly created tract;

11 [~~M.~~] O. "terrain management" means the control of  
12 floods, drainage and erosion and measures required for adapting  
13 proposed development to existing soil characteristics and  
14 topography;

15 [~~N.~~] P. "time of purchase, lease or other  
16 conveyance" means the time of signing any document obligating  
17 the person signing the document to purchase, lease or otherwise  
18 acquire a legal interest in land;

19 [~~Θ.~~] Q. "type-one subdivision" means any  
20 subdivision containing five hundred or more parcels, any one of  
21 which is less than ten acres in size;

22 [~~P.~~] R. "type-two subdivision" means any  
23 subdivision containing not fewer than twenty-five but not more  
24 than four hundred ninety-nine parcels, any one of which is less  
25 than ten acres in size;

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1           [Q-] S. "type-three subdivision" means any  
2 subdivision containing not more than twenty-four parcels, any  
3 one of which is less than ten acres in size;

4           [R-] T. "type-four subdivision" means any  
5 subdivision containing twenty-five or more parcels, each of  
6 which is ten acres or more in size; and

7           [S-] U. "type-five subdivision" means any  
8 subdivision containing not more than twenty-four parcels, each  
9 of which is ten acres or more in size."

10           Section 2. Section 47-6-11 NMSA 1978 (being Laws 1973,  
11 Chapter 348, Section 11, as amended) is amended to read:

12           "47-6-11. PRELIMINARY PLAT APPROVAL--SUMMARY REVIEW.--

13           A. Preliminary plats shall be submitted for  
14 type-one, type-two, type-three, except type-three subdivisions  
15 that are subject to review under summary procedure as set forth  
16 in Subsection I of this section, and type-four subdivisions.

17           B. Prior to approving the preliminary plat, the  
18 board of county commissioners of the county in which the  
19 subdivision is located shall require that the subdivider  
20 furnish documentation of:

21                   (1) water sufficient in quantity to fulfill  
22 the maximum annual water requirements of the subdivision,  
23 including water for indoor and outdoor domestic uses;

24                   (2) water of an acceptable quality for human  
25 consumption and measures to protect the water supply from

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1 contamination;

2 (3) the means of liquid waste disposal for the  
3 subdivision;

4 (4) the means of solid waste disposal for the  
5 subdivision;

6 (5) satisfactory roads to each parcel,  
7 including ingress and egress for emergency vehicles, and  
8 utility easements to each parcel;

9 (6) terrain management to protect against  
10 flooding, inadequate drainage and erosion; and

11 (7) protections for cultural properties,  
12 archaeological sites and unmarked burials that may be  
13 [~~impacted~~] affected directly by the subdivision, as required by  
14 the Cultural Properties Act.

15 C. In addition to the requirements of Subsection B  
16 of this section, prior to approving the preliminary plat, the  
17 board of county commissioners of the county in which the  
18 subdivision is located shall:

19 (1) determine whether the subdivider can  
20 fulfill the proposals contained in [~~his~~] the subdivider's  
21 disclosure statement required by Section 47-6-17 NMSA 1978; and

22 (2) determine whether the subdivision will  
23 conform with the New Mexico Subdivision Act and the county's  
24 subdivision regulations.

25 D. The board of county commissioners shall not

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1 approve the preliminary plat if the subdivider cannot  
2 reasonably demonstrate that [~~he~~] the subdivider can fulfill the  
3 requirements of Subsections B and C of this section.

4 E. Any subdivider submitting a preliminary plat for  
5 approval shall submit sufficient information to the board of  
6 county commissioners to permit the board to determine whether  
7 the subdivider can fulfill the requirements of Subsections B  
8 and C of this section.

9 F. In determining whether a subdivider can fulfill  
10 the requirements of Subsections B and C of this section, the  
11 board of county commissioners shall, within ten days after the  
12 preliminary plat is deemed complete, request opinions from:

13 (1) the state engineer to determine:

14 (a) whether the subdivider can furnish  
15 water sufficient in quantity to fulfill the maximum annual  
16 water requirements of the subdivision, including water for  
17 indoor and outdoor domestic uses; and

18 (b) whether the subdivider can fulfill  
19 the proposals in [~~his~~] the subdivider's disclosure statement  
20 concerning water, excepting water quality;

21 (2) the department of environment to  
22 determine:

23 (a) whether the subdivider can furnish  
24 water of an acceptable quality for human consumption and  
25 measures to protect the water supply from contamination in

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1 conformity with state regulations promulgated pursuant to the  
2 Environmental Improvement Act;

3 (b) whether there are sufficient liquid  
4 and solid waste disposal facilities to fulfill the requirements  
5 of the subdivision in conformity with state regulations  
6 promulgated pursuant to the Environmental Improvement Act, the  
7 Water Quality Act and the Solid Waste Act; and

8 (c) whether the subdivider can fulfill  
9 the proposals contained in [~~his~~] the subdivider's disclosure  
10 statement concerning water quality and concerning liquid and  
11 solid waste disposal facilities;

12 (3) the [~~state highway and~~] department of  
13 transportation [~~department~~] to determine whether the subdivider  
14 can fulfill the state highway access requirements for the  
15 subdivision in conformity with state regulations promulgated  
16 pursuant to Section 67-3-16 NMSA 1978;

17 (4) the soil and water conservation district  
18 to determine:

19 (a) whether the subdivider can furnish  
20 terrain management sufficient to protect against flooding,  
21 inadequate drainage and erosion; and

22 (b) whether the subdivider can fulfill  
23 the proposals contained in [~~his~~] the subdivider's disclosure  
24 statement concerning terrain management; [~~and~~]

25 (5) such other public agencies as the county

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1 deems necessary, such as local school districts and fire  
2 districts, to determine whether there are adequate facilities  
3 to accommodate the proposed subdivision; and

4 (6) any Indian nation, tribe or pueblo located  
5 wholly or partially in New Mexico:

6 (a) whether the subdivider's compliance  
7 with Subsections B and C of this section may adversely affect  
8 the Indian nation, tribe or pueblo;

9 (b) whether the subdivider's compliance  
10 with Subsections B and C of this section may adversely affect  
11 the air quality of the Indian nation, tribe or pueblo;

12 (c) whether the subdivider's compliance  
13 with Subsections B and C of this section may adversely affect  
14 the quality or availability of water to the Indian nation,  
15 tribe or pueblo; and

16 (d) whether the subdivider's compliance  
17 with Subsections B and C of this section may adversely affect  
18 the cultural or other environmental resources of the Indian  
19 nation, tribe or pueblo.

20 G. If, in the opinion of each appropriate public  
21 agency, a subdivider can fulfill the requirements of Subsection  
22 F of this section, ~~then~~ the board of county commissioners  
23 shall weigh these opinions in determining whether to approve  
24 the preliminary plat at a public hearing to be held in  
25 accordance with Section 47-6-14 NMSA 1978.

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1           H. If, in the opinion of the appropriate public  
2 agency, a subdivider cannot fulfill the requirements of  
3 Subsection F of this section or, if the appropriate public  
4 agency does not have sufficient information upon which to base  
5 an opinion on any one of these subjects, the subdivider shall  
6 be notified of this fact by the board of county commissioners,  
7 and the procedure set out below shall be followed:

8                   (1) if the appropriate public agency has  
9 rendered an adverse opinion, the board of county commissioners  
10 shall give the subdivider a copy of the opinion;

11                   (2) the subdivider shall be given thirty days  
12 from the date of notification to submit additional information  
13 to the public agency through the board of county commissioners;  
14 and

15                   (3) the public agency shall have thirty days  
16 from the date the subdivider submits additional information to  
17 change its opinion or issue a favorable opinion when it has  
18 withheld one because of insufficient information. No more than  
19 thirty days following the date of the expiration of the  
20 thirty-day period, during which the public agency reviews any  
21 additional information submitted by the subdivider, the board  
22 of county commissioners shall hold a public hearing in  
23 accordance with Section 47-6-14 NMSA 1978 to determine whether  
24 to approve the preliminary plat. Where the public agency has  
25 rendered an adverse opinion, the subdivider has the burden of

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1 showing that the adverse opinion is incorrect either as to  
2 factual or legal matters.

3 I. If a type-three subdivision contains five or  
4 fewer parcels of land, and unless the land within the  
5 subdivision has been previously identified in the county's  
6 comprehensive plan, as amended or supplemented, or zoning  
7 ordinances as an area subject to unique circumstances or  
8 conditions that require additional review:

9 (1) if the smallest parcel is not less than  
10 three acres in size, the board of county commissioners shall  
11 use the same summary procedure for reviewing the subdivision as  
12 the board uses for reviewing type-five subdivisions; or

13 (2) if the smallest parcel is less than three  
14 acres in size, the board of county commissioners may use the  
15 same summary procedure for reviewing the subdivision as the  
16 board uses for reviewing type-five subdivisions.

17 J. Prior to approving the final plat of a type-five  
18 subdivision, the board of county commissioners of the county in  
19 which the subdivision is located shall:

20 (1) determine whether the subdivider can  
21 fulfill the proposals contained in ~~[his]~~ the subdivider's  
22 disclosure statement required by Section 47-6-17 NMSA 1978; and

23 (2) determine whether the subdivision conforms  
24 with the New Mexico Subdivision Act and the county's  
25 subdivision regulations.

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1           K. The board of county commissioners shall not  
2 approve the final plat of any type-five subdivision if the  
3 subdivider cannot reasonably demonstrate that ~~[he]~~ the  
4 subdivider can fulfill the requirements of Subsection J of this  
5 section.

6           L. Any subdivider submitting a plat of a type-five  
7 subdivision shall submit sufficient information to the board of  
8 county commissioners to permit the board to determine whether  
9 the subdivider can fulfill the requirements of Subsection J of  
10 this section.

11           M. The board of county commissioners shall by  
12 regulation establish a procedure for summary review for certain  
13 type-three subdivisions, as provided in Subsection I of this  
14 section, and all type-five subdivisions. If the board of  
15 county commissioners fails to adopt criteria for summary  
16 review, the board of county commissioners shall approve the  
17 plat if it complies with Sections 47-6-3 and 47-6-4 NMSA 1978  
18 within the time limitation set forth in Section 47-6-22 NMSA  
19 1978. The board of county commissioners may delegate to any  
20 county administrative officer or planning commission member the  
21 authority to approve any subdivision under summary review.  
22 Approval by summary review is conclusive evidence of the  
23 approval of the board of county commissioners."

24           Section 3. Section 47-6-16 NMSA 1978 (being Laws 1973,  
25 Chapter 348, Section 16, as amended) is amended to read:

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1 "47-6-16. SUCCEEDING SUBDIVISIONS.--

2 A. Any proposed subdivision may be combined and  
3 upgraded for classification purposes by the board of county  
4 commissioners with a previous subdivision if the proposed  
5 subdivision includes:

6 [~~A.~~] (1) a part of a previous subdivision that  
7 has been created in the preceding seven-year period; or

8 [~~B.~~] (2) any land retained by a subdivider  
9 after creating a previous subdivision when the previous  
10 subdivision was created in the preceding seven-year period.

11 B. Any subdivision proposed to be combined and  
12 upgraded pursuant to Subsection A of this section shall be  
13 subject to the request for opinion pursuant to Paragraph (6) of  
14 Subsection F of Section 47-6-11 NMSA 1978."

15 Section 4. Section 47-6-20 NMSA 1978 (being Laws 1973,  
16 Chapter 348, Section 20, as amended) is amended to read:

17 "47-6-20. PUBLIC AGENCIES REQUIRED TO PROVIDE COUNTIES  
18 WITH INFORMATION.--

19 A. Any public agency receiving a request from the  
20 board of county commissioners for an opinion pursuant to  
21 Section 47-6-11 NMSA 1978 shall furnish the board with the  
22 requested opinion within the time period set forth in  
23 Subsection A of Section 47-6-22 NMSA 1978. The board of county  
24 commissioners shall furnish the appropriate public agency with  
25 all relevant information that the board has received from the

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1 subdivider on the subject for which the board is seeking an  
2 opinion. If the public agency does not have sufficient  
3 information upon which to base an opinion, the public agency  
4 shall notify the board of this fact.

5 B. Any Indian nation, tribe or pueblo receiving a  
6 request from the board of county commissioners for an opinion  
7 pursuant to Section 47-6-11 NMSA 1978 shall furnish the board  
8 with the requested opinion within the time period set forth in  
9 Subsection A of Section 47-6-22 NMSA 1978. The board of county  
10 commissioners shall furnish the Indian nation, tribe or pueblo  
11 with all relevant information that the board has received from  
12 the subdivider regarding the subject for which the board is  
13 seeking an opinion. If the Indian nation, tribe or pueblo does  
14 not have sufficient information upon which to base an opinion,  
15 the Indian nation, tribe or pueblo shall notify the board of  
16 this fact.

17 C. An Indian nation, tribe or pueblo that chooses  
18 to submit an opinion pursuant to Section 47-6-11 NMSA 1978  
19 shall submit the opinion within the time period set forth in  
20 Subsection A of Section 47-6-22 NMSA 1978.

21 [~~B.~~] D. All opinion requests mailed by the board of  
22 county commissioners shall be by certified mail "return receipt  
23 requested". Boards of county commissioners delivering opinion  
24 requests shall obtain receipts showing the day the opinion  
25 request was received by the particular public agency."

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1           Section 5. Section 47-6-22 NMSA 1978 (being Laws 1973,  
2 Chapter 348, Section 22, as amended) is amended to read:

3           "47-6-22. TIME LIMIT ON ADMINISTRATIVE ACTION.--

4           A. All opinions required of public agencies or  
5 submitted by an Indian nation, tribe or pueblo shall be  
6 furnished to the board of county commissioners within thirty  
7 days after the public agencies [~~receive~~] or Indian nation,  
8 tribe or pueblo receives the written request and accompanying  
9 information from the board of county commissioners. If the  
10 board of county commissioners does not receive a requested  
11 opinion within the thirty-day period, the board shall proceed  
12 in accordance with its own best judgment concerning the subject  
13 of the opinion request. The failure of a public agency or  
14 Indian nation, tribe or pueblo to provide an opinion when  
15 requested by the board of county commissioners does not  
16 indicate that the subdivider's provisions concerning the  
17 subject of the opinion request were acceptable or unacceptable  
18 or adequate or inadequate.

19           B. Final plats submitted to the board of county  
20 commissioners for approval shall be approved or disapproved at  
21 a public meeting of the board of county commissioners within  
22 thirty days of the date the final plat is deemed complete.

23           C. If the board of county commissioners does not  
24 act upon a final plat within the required period of time, the  
25 subdivider shall give the board of county commissioners written

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1 notice of its failure to act. If the board of county  
2 commissioners fails to approve or reject the final plat within  
3 thirty days, the board of county commissioners shall, upon  
4 demand by the subdivider, issue a certificate stating that the  
5 final plat has been approved."

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